



U.S. Department of Commerce Economic Development Administration

Revolving Loan Fund Standard Terms and Conditions

September 30, 2002



PREFACE

The Recipient and any subrecipients must, in addition to the assurances made as part of the application, comply and require each of its borrowers, contractors and subcontractors employed in the completion of the project to comply with all applicable statutes, regulations, executive orders (EOs), Office of Management and Budget (OMB) circulars, terms and conditions, and approved applications.

This award is subject to the laws and regulations of the United States. Any inconsistency or conflict in terms and conditions specified in the award will be resolved according to the following order of precedence: public laws, regulations, applicable notices published in the Federal Register, EOs, OMB circulars, Economic Development Administration (EDA) Revolving Loan Fund Standard Terms and Conditions, and special award conditions. Special award conditions may take precedence over EDA standard terms and conditions, on a case-by-case basis, when allowed by the EDA standard term and condition.

Some of the EDA terms and conditions herein contain, by reference or substance, a summary of the pertinent statutes, or regulations published in the Federal Register or Code of Federal Regulations (CFR), EOs, OMB circulars or the assurances (Forms SF-424B, 424D). To the extent that it is a summary, such provision is not in derogation of, or an amendment to, any such statute, regulation, EO, or OMB circular.

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PART I

GENERAL REQUIREMENTS AND RESPONSIBILITIES

- A. PURPOSE - Business Lending Revolving Loan Funds** The Economic Development Administration's (EDA) grants to capitalize or recapitalize Revolving Loan Funds (RLFs) are most commonly used for business lending, but may also be established for public infrastructure lending or other authorized purposes involving lending. The RLF requirements in these Standard Terms and Conditions are applicable to business lending RLFs established by EDA, a bureau of the U.S. Department of Commerce. Appropriate modifications of these requirements will be addressed in special award conditions to accommodate non-business RLFs.

EDA was established under the Public Works and Economic Development Act of 1965, as amended (P. L. 89-136, 42 U.S.C. § 3121, et seq.) (PWEDA) and as further amended by the Economic Development Administration Reform Act of 1998 (P.L. 105-393). This condensed Standard Terms and Conditions replaces all prior editions of EDA's RLF Standard Terms and Conditions and RLF Administrative Manuals.
(See 13 CFR §§ 308.6 and 308.7)

- B. AUTHORITY** These Standard Terms and Conditions apply to new RLFs and to the future actions of all RLFs funded prior to the effective date of this document. The requirements, therefore, apply to RLFs funded between 1975 and 1999 under EDA's Economic Adjustment Program, then commonly known as Title IX of PWEDA, as well as RLFs funded after February 11, 1999 under Section 209 of P.L. 105-393.

- 1. Definitions** For the purpose of these Standard Terms and Conditions, the following terms apply:
- a.** "Government" refers to the Economic Development Administration (EDA);
 - b.** "Recipient" refers to the undersigned Recipient of Government funds under the Agreement to which this attachment is made a part;
 - c.** "Department" or "DoC" refers to the Department of Commerce;
 - d.** "Regional Office" refers to the appropriate Regional Office of the Economic Development Administration;
 - e.** "Federal Program Officer" refers to the Regional Director of the appropriate EDA Regional Office (the Federal Program Officer is responsible for programmatic and technical aspects of this award);
 - f.** "Grants Officer," unless otherwise indicated by special conditions to this award, refers to the Regional Director of the appropriate EDA Regional Office (the Grants Officer is responsible for all administrative aspects of this award and is

authorized to award, amend, suspend, and terminate financial assistance awards);

- g.** “Project” refers to the activity for which the Government grant was awarded;
- h.** “RLF” refers to this Revolving Loan Fund grant project; and
- i.** “Award,” “EDA Award,” or “DoC Award” refers to the Agreement to which this attachment is made a part.

- 2. Grant Recipients as Trustees** An EDA RLF Recipient (or RLF Operator) holds RLF funds in trust to serve the purpose of the Economic Adjustment Program for which the grant award was made. The Recipient’s obligation to the Federal Government continues as long as the Federal assets continue to exist. The Federal assets include cash, receivables, personal and real property, and notes or other financial instruments developed through the use of the funds. If EDA determines that a Recipient is failing to meet its Federal obligation, the Agency will assert its equitable reversionary interest in the RLF assets. However, EDA’s non-assertion of its interest does not constitute a waiver thereof.

- 3. Grantor Authority to Change Policies** EDA, as the Federal Agency charged with implementing the program, is obligated to: promulgate policies and procedures applicable to all RLF Recipients to ensure compliance with Federal requirements; safeguard the public’s interest in the grant assets; and promote effective use of the funds in accomplishing the purpose for which they were granted.

Pursuant to this obligation, a Recipient is required to comply with the changes that may occur to EDA regulations, policies, or grant terms and conditions. Such changes apply to actions taken by all Recipients, existing and prospective, after the effective date of the change. Loans made by a Recipient prior to the effective date of the change, are not affected unless so required by law. As a matter of policy, EDA will, when practicable, subject proposed RLF Standard Terms and Conditions changes for public review.

- 4. Variances** EDA’s policy is to administer RLF grants uniformly, but it is understood that there may be situations warranting a variance. To accommodate these situations and to encourage innovative and creative ways of addressing economic adjustment problems, EDA, pursuant to 13 CFR § 308.19, may approve variances to 13 CFR Part 308, *Subpart B (Special Requirements for Revolving Loan Fund Projects and Uses of Grant Funds)*, provided they:
- a.** Are consistent with the goals of the Economic Adjustment Program and with an RLF’s strategy,
 - b.** Are necessary and reasonable for the effective implementation of the RLF,
 - c.** Are economically and financially sound,

- d. Do not conflict with applicable legal requirements, and
- e. Do not change the scope of the award after the period of availability of the funds for obligation has expired.
(See 13 CFR § 308.19)

5. Applicable Grant Documents and Published Regulations The grant award, including applicable CFR citations and OMB Circulars as indicated on Form CD-450 (Financial Assistance Award), the budget, these Standard Terms and Conditions, any Special Terms and Conditions, and the current regulations, published at 13 CFR Chapter III, constitute the requirements, hereinafter referred to as “Terms and Conditions,” that are applicable to an EDA RLF grant.

C. CHANGES

1. Programmatic Changes

- a. The Recipient shall not make any programmatic changes to the award without prior written approval by the Grants Officer.
- b. Any requests by the Recipient for programmatic changes must be submitted to the Grants Officer who shall make the final determination and notify the Recipient in writing.
- c. Changes of project scope made after the time the project grant funds could be obligated will not be approved by EDA.

2. Budget Changes and Transfer of Funds Among Categories

- a. Requests for budget changes to the approved estimated budget in accordance with the provision noted below must be submitted to the Grants Officer who shall make the final determination on such requests and notify the Recipient in writing.
- b. Transfers of funds by the Recipient among direct cost categories are permitted for awards in which the Federal share of the project is \$100,000 or less. For awards in which the Federal share of the project exceeds \$100,000, transfers of funds must be approved in writing by the Grants Officer when the cumulative amount of such transfers exceeds 10 percent of the current total Federal and non-Federal funds authorized by the Grants Officer. The 10 percent threshold applies to the total Federal and non-Federal funds authorized by the Grants Officer at the time of the transfer request. This is the accumulated amount of

Federal funding obligated to date by the Grants Officer along with any non-Federal share. The same criterion applies to the cumulative amount of transfer of funds among projects, functions, joint ventures, consortia, activities, and annual costs when budgeted separately within an award. Transfers will not be permitted if such transfers would cause any Federal appropriation, or part thereof, to be used for purposes other than those intended. This transfer authority does not authorize the Recipient to create new budget categories within an approved budget unless the Grants Officer has provided prior approval.

- c. The Recipient is not authorized at any time to transfer amounts budgeted for direct costs to the indirect costs line item or vice versa, without written prior approval of the Grants Officer.

3. Time Schedule Extensions

- a. RLF Recipients are responsible for contacting EDA as soon as conditions become known that may materially affect their ability to meet the approved time schedules. RLF Recipients must submit a written request to the Grants Officer for continued use of grant funds beyond a missed deadline. Extension requests must provide good reason for the delay and demonstrate that:
 - (1) The delay was unforeseen or generally beyond the control of the RLF Recipient;
 - (2) The need for the RLF still exists;
 - (3) The current and planned use and the anticipated benefits of the RLF will remain consistent with the current CEDS and the RLF Plan;
 - (4) The achievement of a new proposed time schedule is reasonable; and
 - (5) An explanation why no further delays are foreseen.
- b. EDA is under no obligation to grant a time extension, and in the event an extension is denied, EDA may deobligate (terminate) all or part of the unused portion of the grant.
(See 13 CFR § 308.17 (b))

- D. LOCAL SHARE** Awards which include Federal and non-Federal sharing incorporate an estimated budget consisting of shared allowable costs. If actual allowable costs are less than the total approved estimated budget, the Federal and non-Federal cost share ratio shall be calculated as a percentage of Federal and non-Federal approved amounts. If actual allowable costs are greater than the total approved estimated budget, the Federal share shall not exceed the total Federal dollar amount as reflected in the Financial Assistance Award (CD-450) and Amendment to Financial Assistance Award (CD-451).

E. AWARD PAYMENTS

1. **Method of payment** The advance method of payment shall be authorized unless otherwise specified in a special award condition. The Grants Officer determines the appropriate method of payment. Payments will be made through electronic funds transfers directly to the Recipient's bank account and in accordance with the requirements of the Debt Collection Improvement Act of 1996. The DoC Award Number must be included on all payment-related correspondence, information, and forms.
2. **Requesting payment** When the "Request for Advance or Reimbursement" (SF-270) is used to request payment, the Recipient shall submit the request no more frequently than monthly, and advances shall be approved for periods to cover only expenses anticipated over the next 30 days. When the SF-270 is used, the Recipient must complete the SF-3881, "ACH Vendor Miscellaneous Payment Enrollment Form," and return it to the Grants Officer.
3. **EDA right to change method of payment** Advances shall be limited to the minimum amounts necessary to meet immediate disbursement needs. Advanced funds not disbursed in a timely manner must be promptly returned to EDA. If a Recipient demonstrates an unwillingness or inability to establish procedures which will minimize the time between the transfer of funds and disbursement, or if the Recipient otherwise fails to continue to qualify for the advance method of payment, the Grants Officer may change the method of payment to reimbursement only.
4. **Timing of request for disbursement** An RLF Recipient must request disbursements from EDA only at the time, and in the amount, immediately needed to close a loan or disburse funds to a borrower. Grant funds must be requested only for immediate use, i.e., when the intent is to disburse the funds within 14 days of receipt.
(See 13 CFR § 308.16 (a))
5. **Amount of disbursement** As each new loan is made, the RLF grant Recipient may request a disbursement of grant funds only for the difference, if any, between the amount of funds available for relending (from repayments of loan principal and RLF income) and the amount of the new loan, less an amount for local matching funds as may be required to be disbursed concurrent with the grant. However, RLF income received during the grant period may be held to cover eligible administrative expenses and need not be disbursed in order to draw additional grant funds.
(See 13 CFR § 308.16 (b))

- 6. Interest-bearing accounts** All RLF grant funds disbursed by EDA to reimburse RLF Recipients for loan obligations already incurred must be held in interest bearing accounts by RLF Recipients until disbursed to the borrower.
(See 13 CFR § 308.16 (c))
- 7. Pre-disbursement requirements** RLF Recipients are required to provide:
- a.** Evidence to EDA that they have fidelity bond coverage for persons authorized to handle funds under the grant award in an amount sufficient to protect the interests of EDA and the RLF. Note that such insurance coverage must exist at all times during the life of the RLF; and
 - b.** Certification in accordance with 13 CFR § 308.15 (b)(1) & 13 CFR § 308.16 (d), that the Recipient's accounting system is adequate to identify, safeguard and account for all RLF funds, including RLF income.
 - c.** RLF Recipients are required to certify that standard RLF loan documents necessary for lending are in place and that these documents have been reviewed by its legal counsel for adequacy and compliance with the terms and conditions of the grant and applicable state and local laws. The standard loan documents must include, at a minimum, the following:
 - (1)** Loan application,
 - (2)** Loan agreement,
 - (3)** Promissory note,
 - (4)** Security agreement(s),
 - (5)** Deed of Trust or Mortgage (as applicable),
 - (6)** Agreement of prior lien holder (as applicable), and
 - (7)** Personal Guaranty Agreement (for officers or owners of corporate borrowers, as applicable).
- 8. Loan Closing and Disbursement Schedule**
- a.** RLF loan activity must be sufficient to draw down grant funds in accordance with the time schedule for loan closings and disbursements to eligible RLF borrowers as prescribed in the award conditions. The time schedule requires that the initial lending round (i.e., the grant disbursement phase) be completed within three years of the grant award.
(See 13 CFR § 308.17 (a)(1))

b. If an RLF Recipient substantially fails to meet the prescribed time schedules for loan closings and disbursements, EDA may terminate the undisbursed balance of the award. Exceptions may be granted where:

- (1)** Funds are needed to close and disburse funds on loans approved prior to the deadline and will be disbursed within 45 days of the deadline,
- (2)** Funds are needed to meet continuing disbursement obligations on loans closed prior to the deadline, or
- (3)** EDA has approved a time schedule extension.
(See 13 CFR § 308.17 (a)(2))

c. Prematurely drawn funds. If grant funds are requested and the loan disbursement is subsequently delayed, an RLF Recipient may hold the funds up to 30 days from the date of receipt. In the event that a loan disbursement is delayed beyond 30 days from the date of receipt of the Federal disbursement, the undisbursed funds must be returned to the Government for credit to the RLF Recipient's account. Returned funds will be available to the RLF Recipient for a future draw down. When returning prematurely drawn funds, checks should identify on their face the name of the grantor agency - "EDA" followed by the grant award number and the words "Premature Draw."
13 CFR § 308.16 (e)(1)

9. Interest The interest earned on prematurely withdrawn funds must be returned to the Government (with the exception of \$100 per year which may be retained for administrative expenses by states, local governments and Indian tribes in accordance with 15 CFR Part 24, and \$250 for those subject to 15 CFR Part 14 as appropriate) and should be remitted promptly, but no less frequent than quarterly. All checks submitted should state "EDA" on their face and the award number followed by the word "INTEREST" in order to identify the check in question as remittance of interest income.
(See 13 CFR § 308.16 (e)(2))

10. Proportional Use of Local Share

a. When some portion of the local share of the RLF project is cash, it may only be used for lending. If the RLF project has an all-cash matching share, EDA's funds will be disbursed as needed for loan closing. The cash matching funds must be used either in proportion to the EDA funds, or at a faster rate than EDA funds. Exceptions to this requirement may be granted by the Grants Officer based on sufficient documentation demonstrating previously determined

plans for later commitment of cash or in-kind contributions. However, the Recipient must meet its cost share commitment over the life of the award.
(See 13 CFR § 308.16 (f)(1))

- b. When an RLF project has a combination of in-kind and cash matching share, the non-federal cash together with the Federal cash constitute the funds available for making loans and will be disbursed proportionately as needed for loan closing, provided that the last 20 percent of the Federal funds may not be disbursed until all local in-kind match has been expended. The full amount of the local cash matching share will be expected to remain for use in the RLF.
(See 13 CFR § 308.16 (f)(2))
- c. Upon repayment of loans, local cash share funds are treated the same as EDA funds. Repayments of principal must be placed in the RLF for relending, and interest payments must be used either for relending or for eligible RLF administrative costs. The local cash matching share must be available when needed for lending and must be under the control of the RLF Recipient for the duration of the RLF for use in accordance with the terms of the grant.
(See 13 CFR § 308.16 (f)(3))

F. INCURRING COSTS OR OBLIGATING FEDERAL FUNDS BEYOND THE EXPIRATION DATE

- 1. The Recipient shall not incur costs or obligate funds for any purpose pertaining to the operation of the project, program, or activities beyond the expiration date stipulated in the award. The only costs which are authorized for a period of up to 90 days following the award expiration date are those strictly associated with closeout activities. Closeout activities are limited to the preparation of final progress, financial, and required project audit reports, unless otherwise approved in writing by the Grants Officer.
- 2. Unless otherwise authorized in 15 CFR § 14.25(e)(4) or a special award condition, any extension of the award period can only be authorized by the Grants Officer in writing. Verbal or written assurances of funding from other than the Grants Officer shall not constitute authority to obligate funds for programmatic activities beyond the expiration date.
- 3. The Department has no obligation to provide any additional prospective funding. Any amendment of the award to increase funding and to extend the period of performance is at the sole discretion of the Department.

G. FINANCIAL REPORTS

- 1. Financial Status Reports** The Recipient shall submit a “Financial Status Report” (SF-269) on a semiannual basis for the periods ending March 31 and September 30, or any portion thereof, unless otherwise specified in a special award condition. Reports are due no later than 30 days following the end of each reporting period.
- 2. Federal Cash Transactions Report** The Recipient shall submit a “Federal Cash Transactions Report” (SF-272) for each award where funds are advanced to Recipients. The SF-272 should be submitted on a semiannual basis and on the same schedule as the SF-269. The SF-272 is due 15 working days following the end of each reporting period unless otherwise specified in a special award condition.
- 3.** Unless otherwise authorized by the special award conditions, all financial reports shall be submitted in triplicate (one original and two copies) to the Grants Officer.

H. OTHER FEDERAL AWARDS WITH SIMILAR PROGRAMMATIC ACTIVITIES

The Recipient shall immediately provide written notification to the Federal Program Officer and the Grants Officer in the event that, subsequent to receipt of the DoC award, other financial assistance is received to support or fund any portion of the scope of work incorporated into the DoC award. DoC will not pay for costs that are funded by other sources.

I. DISCLAIMER PROVISIONS

- 1.** The United States expressly disclaims any and all responsibility or liability to the Recipient or third persons for the actions of the Recipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this award or any subaward or subcontract under this award.
- 2.** The acceptance of this award by the Recipient does not in any way constitute an agency relationship between the United States and the Recipient.

J. FEES FOR PAYING ATTORNEYS AND CONSULTANTS

Grant funds must not be used directly or indirectly to pay for attorney’s or consultant’s fees in connection with obtaining grants and contracts for projects funded under PWEDA.
(See 13 CFR § 316.12)

K. NAME CHECK REVIEW

A name check review shall be performed by the Office of the Inspector General (OIG) on key individuals associated with non-profit and for-profit organizations, unless an exemption has been authorized by the Inspector General, such as the

exemption authorized for Economic Development Districts designated by the Economic Development Administration.

1. **Results of Name Check** DoC reserves the right to take any of the actions described in section K. 2. below if any of the following occurs as a result of the name check review:
 - a. A key individual fails to submit the required form "Identification - Applicant for Funding Assistance (CD-346);"
 - b. A key individual made an incorrect statement or omitted a material fact on the CD-346; or
 - c. The name check reveals significant adverse findings that reflect on the business integrity or responsibility of the Recipient and/or key individual.
2. **Action(s) Taken as a Result of Name Check Review** If any situation noted in K. 1. occurs, DoC, at its discretion, may take one or more of the following actions:
 - a. Consider termination of the award;
 - b. Require the removal of any key individual from association with the management of and/or implementation of the award; and/or
 - c. Make appropriate provisions or revisions at DoC's discretion with respect to the method of payment and/or financial reporting requirements.

L. LOBBYING RESTRICTIONS

1. **Statutory Provisions** The Recipient shall comply with the provisions of Section 319 of Public Law 101-121, which added Section 1352 to Chapter 13 of Title 31 of the United States Code, and DoC implementing regulations published at 15 CFR Part 28, "New Restrictions on Lobbying." These provisions generally prohibit the use of Federal funds for lobbying the Executive or Legislative Branches of the Federal government in connection with the award, and require the disclosure of the use of non-Federal funds for lobbying.
(See 15 CFR Part 28)
2. **Disclosure of Lobbying Activities** The Recipient receiving in excess of \$100,000 in Federal funding shall submit a completed "Disclosure of Lobbying Activities" (SF-LLL) regarding the use of non-Federal funds for lobbying. The SF-LLL shall be submitted within 30 days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. The Recipient must submit the

SF-LLLs, including those received from subrecipients, contractors, and subcontractors, to the Grants Officer.

- 3. Indian Tribe Exclusion from Certification and Disclosure Requirements** An Indian tribe or organization that is seeking an exclusion from Certification and Disclosure requirements must (preferably in an attorney's opinion) cite specific provision(s) of Federal law that it relies on to conduct lobbying activities that otherwise would be subject to the prohibitions in and to the Certification and Disclosure requirements of 15 CFR Part 28: New Restrictions on Lobbying.
- M. GOVERNMENT DEBARMENT AND SUSPENSION (NONPROCUREMENT)** The Recipient shall comply with the provisions of EO 12549, "Debarment and Suspension," and DoC's implementing regulations published at 15 CFR Part 26, Subparts A through E, "Government-wide Debarment and Suspension (Nonprocurement)," which generally prohibit entities that have been debarred, suspended, or voluntarily excluded from participating in Federal nonprocurement transaction's either through primary or lower tier covered transactions.
- N. DRUG-FREE WORKPLACE** The Recipient shall comply with the provisions of Public Law 100-690, Title V, Subtitle D, "Drug-Free Workplace Act of 1988," and DoC implementing regulations published at 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)," which require that the Recipient take steps to provide a drug-free workplace.
- O. TAX REFUNDS** Refunds of FICA/FUTA taxes received by the Recipient during or after the award period must be refunded or credited to DoC where the benefits were financed with Federal funds under the award. The Recipient agrees to contact the Grants Officer immediately upon receipt of these refunds. The Recipient further agrees to refund portions of FICA/FUTA taxes determined to belong to the Federal Government, including refunds received after the award end date.
- P. FREEDOM OF INFORMATION (FOIA) AND PRIVACY ACT** The rules and procedures regarding public access to records or documents held by the Economic Development Administration are found at 15 CFR Part 4.
- Q. NON-DISCRIMINATION REQUIREMENTS** No person in the United States shall, on the ground of race, color, national origin, handicap, age, religion, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance. The Recipient agrees to comply with the non-discrimination requirements below:

1. Statutory Provisions

- a.** Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.) and DoC implementing regulations published at 15 CFR Part 8 which prohibit discrimination on the grounds of race, color, or national origin under programs or activities receiving Federal financial assistance;
- b.** Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.) prohibiting discrimination on the basis of sex under Federally assisted education programs or activities;
- c.** Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794) and DoC implementing regulations published at 15 CFR Part 8b prohibiting discrimination on the basis of handicap under any program or activity receiving or benefitting from Federal assistance;
- d.** The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 et seq.) and DoC implementing regulations published at 15 CFR Part 20 prohibiting discrimination on the basis of age in programs or activities receiving Federal financial assistance;
- e.** The Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.) prohibiting discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation;
- f.** Section 112 of P.L. 92-65 (42 U.S.C. § 3123) prohibiting sex discrimination in any program or activity receiving Federal financial assistance under PWEDA.
- g.** Any other applicable non-discrimination law(s).

2. Other Provisions

- a.** Parts II and III of EO 11246 (30 Fed. Reg. 12319 (1965)), as amended by EO 11375 (32 Fed. Reg. 14303 (1967)), and EO 12086, (43 Fed. Reg. 46501 (1978)), require Federally assisted construction contracts to include the nondiscrimination provisions of §§ 202 and 203 of that EO and Department of Labor regulations implementing EO 11246 (41 CFR § 60-1.4(b) (1991)).

- b. EDA's regulations regarding civil rights requirements are found in 13 CFR Part 317. Special requirements for RLF operators are found in EDA's Civil Rights Guidelines.

R. CODES OF CONDUCT AND SUBAWARD, CONTRACT, AND SUBCONTRACT PROVISIONS

1. **Code of Conduct for Recipients** Pursuant to the certification in SF-424B, paragraph 3, the Recipient must maintain written standards of conduct to establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain in the administration of this award.
2. **Applicability of Award Provisions to Subrecipients** The Recipient shall require all subrecipients, including lower tier subrecipients, under the award to comply with the provisions of the award including applicable cost principles, administrative, and audit requirements. Note that different cost principles apply to for-profit contractors, non-profit organizations, educational institutions and units of government. Care must be exercised, therefore, in applying the correct cost principles depending on what type of entity the subrecipients or contractor may be.
3. **Competition and Codes of Conduct for Subawards**
 - a. All subawards will be made in a manner to provide, to the maximum extent practicable, open and free competition. The Recipient must be alert to organizational conflicts of interest as well as other practices among subrecipients that may restrict or eliminate competition. In order to ensure objective subrecipients performance and eliminate unfair competitive advantage, subrecipients that develop or draft work requirements, statements of work, or requests for proposals shall be excluded from competing for such subawards.
 - b. The Recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of subawards. No employee, officer, or agent shall participate in the selection, award, or administration of a subaward supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization in which he/she serves as an officer or which employs or is about to employ any of the parties mentioned in this section, has a financial interest or other interest in the organization selected or to be selected for a subaward. The officers, employees, and agents of the Recipient shall neither solicit nor accept anything of monetary value from

subrecipients. However, the Recipient may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the Recipient.

- c. A financial interest may include employment, stock ownership, a creditor or debtor relationship, or prospective employment with the organization selected or to be selected for a subaward. An appearance of impairment of objectivity could result from an organizational conflict where, because of other activities or relationships with other persons or entities, a person is unable or potentially unable to render impartial assistance or advice. It could also result from non-financial gain to the individual, such as benefit to reputation or prestige in a professional field.

4. Applicability of Provisions to Subawards, Contracts, and Subcontracts

- a. The Recipient shall include the following notice in each request for applications or bids:

Applicants/bidders for a lower tier covered transaction (except for goods and services under the \$100,000 simplified acquisition threshold and where the lower tier Recipient will have no critical influence on or substantive control over the award) are subject to 15 CFR Part 26, Subparts A through E, "Governmentwide Debarment and Suspension (Nonprocurement)". In addition, applicants/bidders for a lower tier covered transaction for a subaward, contract, or subcontract greater than \$100,000 of Federal funds at any tier are subject to 15 CFR Part 28, "New Restrictions on Lobbying." Applicants/bidders should familiarize themselves with these provisions, including the certification requirements. Therefore, applications for a lower tier covered transaction must include a Form CD-512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions and Lobbying," completed without modification.

- b. The Recipient shall include a statement in all lower tier covered transactions (subawards, contracts, and subcontracts), that the award is subject to EO 12549, "Debarment and Suspension" and DoC implementing regulations published at 15 CFR Part 26, Subparts A through E, "Governmentwide Debarment and Suspension (Nonprocurement)."
- c. The Recipient shall include a statement in all lower tier covered transactions (subawards, contracts, and subcontracts) exceeding \$100,000 in Federal

funds, that the subaward, contract, or subcontract is subject to Section 319 of Public Law 101-121, which added Section 1352, regarding lobbying restrictions, to Chapter 13 of Title 31 of the United States Code as implemented at 15 CFR Part 28, "New Restrictions on Lobbying." The Recipient shall further require the subrecipients, contractor, or subcontractor to submit a completed "Disclosure of Lobbying Activities" (Form SF-LLL) regarding the use of non-Federal funds for lobbying. The Form SF-LLL shall be submitted within 15 days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. The Form SF-LLL shall be submitted from tier to tier until received by the Recipient. The Recipient must submit all disclosure forms received, including those that report lobbying activity on its own behalf, to the Grants Officer within 30 days following the end of the calendar quarter.

- 5. Minority Owned Business Enterprise** DoC encourages Recipients to utilize minority and women-owned firms and enterprises in contracts under financial assistance awards. The Minority Business Development Agency will assist Recipients in matching qualified minority owned enterprises with contract opportunities. For further information contact:

U.S. Department of Commerce
Minority Business Development Agency
Herbert C. Hoover Building
14th Street and Constitution Avenue, NW
Washington, D.C. 20230

6. Subaward and/or Contract to a Federal Agency

- a.** The Recipient, subrecipients, contractor, and/or subcontractor shall not sub-grant or sub-contract any part of the approved project to any agency or employee of DoC and/or other Federal department, agency or instrumentality, without the prior written approval of the Grants Officer.
- b.** Requests for approval of such action must be submitted to the Federal Program Officer who shall review and make a recommendation to the Grants Officer. The Grants Officer shall make the final determination and will notify the Recipient in writing of the final determination.

7. Other Federal Requirements Applicable to Subawards, Contracts or Subcontracts RLF Recipients are responsible for ensuring, prior to awarding

subawards, contracts or subcontracts, that prospective borrowers, consultants, or contractors are aware of and comply with the Federal statutory and regulatory requirements that apply to activities carried out with RLF loans. RLF Recipients must develop loan agreements that include applicable Federal requirements to ensure compliance and adopt procedures to diligently correct instances of non-compliance, including the calling of loans if necessary. RLF Recipient loan documents and subaward, contract or subcontract documents and procedures must protect and hold the Government harmless from and against all liabilities that the Government may incur as a result of providing an award to assist (directly or indirectly) in site preparation or construction as well as the renovation or repair of any facility or site. This applies to the extent that such liabilities are incurred because of ground water, surface, soil or other conditions caused by operations of the RLF Recipient or any of its predecessors on the property.

In administering the RLF, the RLF Recipient must adopt procedures to comply, and ensure that potential borrowers, consultants, or contractors comply, with applicable laws and regulations including, but not limited to 13 CFR §§ 316.1, 316.3, 316.7, 316.8, 316.15, and 317.
(See 13 CFR § 308.10(b))

S. PROPERTY MANAGEMENT Property acquired by the Recipient under the grant may consist of real property, personal property or intangible personal property such as money, notes, and security interests.

- 1. Prohibition Against Assignment by the Recipient** Except as provided for below or in Special Conditions to the Award, the Recipient shall not transfer, pledge, mortgage, or otherwise assign the award, or any interest therein, or any claim arising thereunder, to any party or parties, bank trust companies, or other financing or financial institutions.
- 2. Use of Proceeds of Sale, Collection or Liquidation of RLF Loans** Over the course of operating an RLF, in the event of the sale, collection, or liquidation of RLF loans, any proceeds, net of repaid principal and reasonable administrative costs incurred, up to the amount of the outstanding loan principal, must be returned to the RLF for relending. Any net proceeds from loan sales above the outstanding loan principal, is considered RLF income and must either be added to the RLF capital base for lending or used to cover eligible costs for administering the RLF in accordance with the rules for use of RLF income. The net transaction proceeds must be used for additional loans as part of the RLF project.
(See 13 CFR § 314.10(c))
- 3. Sale or Securitization of Loans to Raise New Funds** With EDA's consent, Recipients holding revolving loan fund (RLF) property (including but not limited to money, notes, and security interests) may sell such property or encumber such

property as part of a securitization of the RLF portfolio. The net transaction proceeds must be used for additional loans as part of the RLF project.

(See 13 CFR § 314.10(a) and § 308.8)

4. **Sale of Loans and/or Property - Dissolution of an RLF** When a Recipient determines that it is no longer necessary or desirable to operate an RLF, the RLF may be terminated; provided that, unless otherwise stated in the award, the Recipient must compensate the Federal Government for the Federal share of the value of the RLF property. The Federal share is that percentage of the capitalized RLF contributed by EDA applied to all RLF property, including the present value of all outstanding loans. However, with EDA's prior approval, upon termination the Recipient may use for other economic development purposes that portion of such RLF property that EDA determines is attributable to the payment of interest.
(See 13 CFR § 314.10(b))

5. **Standards for Real Property and Personal Property** With respect to real property or personal property acquired by the Recipient under the grant award, the Recipient shall comply with the property management standards found in EDA regulations at 13 CFR Part 314 regarding Use of Property, Unauthorized Use, Federal Share, Encumbrances, Title, Recorded Statement and Release of EDA's Property Interest.
(See 13 CFR Part 314)

T. NON-COMPLIANCE WITH THE GRANT TERMS

1. **Unsatisfactory Performance** Failure to perform the work in accordance with the terms of the award and maintain at least a satisfactory performance rating or equivalent evaluation may result in designation of the Recipient as high risk and assignment of special award conditions or other further action as specified in this section.
2. **Non-Compliance with Award Provisions** Failure to comply with any or all of the provisions of the award may have a negative impact on future funding by DoC and may be considered grounds for any or all of the following actions: establishment of an account receivable, withholding payments under any DoC awards to the Recipient, changing the method of payment from advance to reimbursement only, or the imposition of other special award conditions, suspension of any DoC active awards, and termination of any DoC active awards.
3. **Unauthorized Use** Except as provided in 13 CFR § 314.3(b), (c) or (d), if property is disposed of or encumbered without EDA approval, EDA may assert its interest in the property to recover the Federal share of the value of the property, plus costs and interest, for the Federal Government. The standards of the Uniform Administrative

Requirements for Grants at 15 CFR parts 14 and 24 or any supplements or successors thereto, as applicable, shall apply.
(See 13 CFR § 314.4)

4. Suspension and Termination

- a.** EDA may suspend or terminate any RLF grant for cause based on, but not limited to, the following:
- (1)** Failure to make loans in accordance with the RLF Plan, including the time-schedule for loan closings;
 - (2)** Failure to obtain prior EDA approval for such changes to the RLF Plan, including provisions for administering the RLF;
 - (3)** Failure to submit progress, financial or audit reports as required by the terms and conditions of the grant agreement;
 - (4)** Failure to comply with prohibitions related to “conflict-of-interest” for any transactions involving the use of RLF funds; or
 - (5)** Failure to operate the RLF in accordance with the RLF Plan and the terms and conditions of the grant agreement.
(See 13 CFR § 314.4(c)(1))
- b. Suspension of Award** The Grants Officer may suspend an RLF award when he/she determines that circumstances under the award warrant temporarily stopping all activities under the award, including making payments to the Recipient, pending the Recipient taking corrective actions as specified by the Grants Officer. Upon suspension, the grant Recipient will be prohibited from any new lending activity, although normal loan servicing and collection efforts will continue. In addition, the Recipient may be subject to restrictions on the use of RLF income and specific actions to protect the RLF assets may be required. The Grants Officer will promptly notify the Recipient in writing of the determination, the reasons for the suspension and what the Recipient can do to remedy the situation. If immediate action is necessary to protect the government’s interest, the Grants Officer may provide thirty days notice, informing the Recipient that, unless information is received within the thirty days establishing compliance by the Recipient with the requested remedial actions, EDA will proceed with the suspension of the award. However, if it appears that the Recipient has not taken or will not take the necessary action, and/or that continued operation of the RLF would place the assets at risk, EDA

may suspend the grant immediately. If specified corrective actions are not taken, the Grants Officer may, after considering the best interests of the government, take more severe enforcement action, including termination of the award. Suspension of an award may result in a no-cost extension of the award period to compensate for work that was not done on the project during the award suspension.

- c. **Termination for Cause** The Grants Officer may terminate an RLF award for material non-compliance. Material non- includes, but is not limited to, violation of the terms and conditions of the award; failure to perform award activities in a satisfactory manner; improper management or use of award funds; or fraud, waste, abuse, mismanagement, or criminal activity. The Recipient will be notified of the termination action in writing using the same minimum requirements listed under a suspension in Paragraph b. above if the suspension did not precede the termination action.
(See 15 CFR § 14.61(a)(2) or 15 CFR § 24.43 as applicable)
- d. **Termination for Convenience** A Recipient has the right to request termination for convenience of the award, in whole, or in part, at any time. Termination is undertaken without prejudice to the Recipient when it is agreed upon by both parties, that the purpose of the grant would not be served by further expenditure of funds. The Grants Officer and the Recipient must agree in writing to the conditions of the termination for convenience. In the case of a partial termination, sufficient funds will be retained by the Recipient to permit the effective operation of the RLF. Any unused portion of the Federal share of funds must be returned to the U.S. Treasury.
(See 15 CFR § 14.61(a) or 15 CFR § 24.44 as applicable)
- e. **Trustees** Whenever the RLF Recipient fails in its fiduciary responsibilities or is unable or unwilling to perform as trustee of the grant, EDA may suspend, terminate or transfer the grant to an eligible successor with jurisdiction over the project area to administer it. If EDA transfers the grant, the original Recipient remains responsible for the period it was the Recipient, and the successor Recipient holds the project property with the responsibilities of an original Recipient under the award.
See 13 CFR § 314.4(c)(2))
- f. **Right to Recover** Whenever EDA terminates any RLF grant for cause, in whole or in part, it has the right to recover residual funds and assets of the RLF grant in accordance with the legal rights of the parties.
(See 13 CFR § 314.4(c)(3))

- g. **Partial Termination** If there is a partial termination of an RLF grant, the full amount of the original non-federal matching share is expected to be retained in the RLF for lending purposes unless otherwise provided for in the grant agreement or agreed to in writing by EDA.
(See 13 CFR § 314.4(c)(4))

U. **AUDITS** Under the Inspector General Act of 1978, as amended, 5 U.S.C. App. 3, § 1 et seq., an audit of the award may be conducted at any time. The Inspector General of the DoC, or any of his or her duly authorized representatives, shall have access to any pertinent books, documents, papers and records of the Recipient, whether written, printed, recorded, produced or reproduced by any electronic, mechanical, magnetic or other process or medium, in order to make audits, inspections, excerpts, transcripts or other examinations as authorized by law. When the OIG requires a program audit on a DoC award, the OIG will usually make the arrangements to audit the award, whether the audit is performed by OIG personnel, an independent accountant under contract with DoC, or any other Federal, state or local audit entity.

1. Organization-Wide, Program-Specific, and Project Audits

- a. Organization-wide or program-specific audits shall be performed in accordance with the Single Audit Act Amendments of 1996, as implemented by OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations." Recipients that are subject to the provisions of OMB Circular A-133 and that expend \$300,000 or more in a year in Federal awards shall have an audit conducted for that year in accordance with the requirements contained in OMB Circular A-133. RLF audit guidelines can be found in the Compliance Supplement to OMB Circular A-133.
- b. Pursuant to 15 CFR § 14.26 (c) and (d), DoC requires for-profit recipients of awards that exceed \$100,000 in Federal funding to have a program-specific audit performed. If DoC does not have a program-specific audit guide available for the program, the auditor should follow Generally Accepted Government Auditing Standards and the requirements for a program-specific audit as described in OMB Circular A-133 § .235. A copy of the program-specific audit shall be submitted to the OIG at the following address with a copy of the transmittal letter to the Grants Officer:

Office of Inspector General
U.S. Department of Commerce
Atlanta Regional Office of Audits
401 West Peachtree Street, N.W., Suite 2742
Atlanta, GA 30308

- c. Recipients expending Federal awards over \$300,000 a year and having audits conducted in accordance with OMB Circular A-133 shall submit a copy of organization-wide or program-specific audits to the Bureau of the Census, which has been designated by OMB as a central clearinghouse. The address is:

Federal Audit Clearinghouse
Bureau of the Census
1201 E. 10th Street
Jeffersonville, IN 47132

2. Audit Resolution Process

- a. An audit of the award may result in the disallowance of costs incurred by the Recipient and the establishment of a debt (account receivable) due DoC. For this reason, the Recipient should take seriously its responsibility to respond to all audit findings and recommendations with adequate explanations and supporting evidence whenever audit results are disputed.
- b. In accordance with the Federal Register notice dated January 27, 1989 (54 Fed. Reg. 4053), a Recipient whose award is audited has the following opportunities to dispute the proposed disallowance of costs and the establishment of a debt:
 - (1) Unless the Inspector General determines otherwise, the Recipient has 30 days from the date of the transmittal of the draft audit report to submit written comments and documentary evidence.
 - (2) The Recipient has 30 days from the date of the transmittal of the final audit report to submit written comments and documentary evidence. There will be no extension of this deadline.
 - (3) The DoC shall review the documentary evidence submitted by the Recipient and shall notify the Recipient of the results in an Audit Resolution Determination Letter. The Recipient has 30 days from the date of receipt of the Audit Resolution Determination Letter to submit a written appeal. There will be no extension of this deadline. The appeal is the last opportunity for the Recipient to submit written comments and documentary evidence that dispute the validity of the audit resolution determination. In addition, an appeal does not preclude the Recipient's obligation to pay a debt that may be established, nor does the appeal preclude the accrual of interest on a debt.

- (4) The DoC shall review the Recipient's appeal and notify the Recipient of the results in an Appeal Determination Letter. After the opportunity to appeal has expired or after the appeal determination has been rendered, DoC will not accept any further documentary evidence from the Recipient. No other administrative appeals are available in DoC.
- (5) An appeal of the Audit Resolution Determination does not prevent the establishment of the audit-related debt nor does it prevent the accrual of interest on the debt. If the Audit Resolution Determination is overruled or modified on appeal, appropriate corrective action will be taken retroactively. An appeal will stay the offset of funds owed by the auditee against funds due to the auditee.

V. DEBTS

1. **Payment of Debts Owed the Federal Government** Any debts determined to be owed the Federal Government shall be paid promptly by the Recipient. In accordance with 15 CFR § 21.4, a debt will be considered delinquent if it is not paid within 15 days of the due date, or if there is no due date, within 30 days of the billing date. Failure to pay a debt by the due date, or if there is no due date, within 30 days of the billing date, shall result in the imposition of late payment charges as noted below. In addition, failure to pay the debt or establish a repayment agreement by the due date, or if there is no due date, within 30 days of the billing date, will also result in the referral of the debt for collection action and may result in DoC taking further action as specified in the standard term and condition entitled "Non-Compliance With Award Provisions." Funds for payment of a debt must not come from other Federally sponsored programs. Verification that other Federal funds have not been used will be made, e.g., during on-site visits and audits.
2. **Late Payment Charges**
 - a. An interest charge shall be assessed on the delinquent debt as established by the Debt Collection Act (31 U.S.C. § 3701 et seq.), as amended. The minimum annual interest rate to be assessed is the Department of the Treasury's Current Value of Funds Rate. This rate is published in the Federal Register by the Department of the Treasury. The assessed rate shall remain fixed for the duration of the indebtedness.
 - b. A penalty charge shall be assessed on any portion of a debt that is delinquent for more than 90 days, although the charge will accrue and be assessed from the date the debt became delinquent.

- c. An administrative charge shall be assessed to cover processing and handling the amount due.
- d. State and local governments are not subject to penalty and administrative charges.

W. MISCELLANEOUS REQUIREMENTS

1. Criminal and Prohibited Activities

- a. The Program Fraud Civil Remedies Act (31 U.S.C. §§ 3801-3812) provides for the imposition of civil penalties against persons who make false, fictitious, or fraudulent claims to the Federal government for money (including money representing grants, loans or other benefits).
- b. False statements (18 U.S.C. §§ 287 and 1001) provides that whoever makes or presents any false, fictitious, or fraudulent statements, representations, or claims against the United States shall be subject to imprisonment of not more than five years and shall be subject to a fine in the amount provided by 18 U.S.C. § 287.
- c. False Claims Act (31 U.S.C. § 3729 et seq.) provides that suits under this act can be brought by the government, or a person on behalf of the government, for false claims under Federal assistance programs.
- d. Copeland “Anti-Kickback” Act (18 U.S.C. § 874 and 40 U.S.C. § 276c) prohibits a person or organization engaged in a Federally supported project from enticing an employee working on the project from giving up a part of his compensation under an employment contract.

2. Foreign Travel

- a. The Recipient shall comply with the provisions of the Fly America Act (49 U.S.C. § 40118). The implementing regulations of the Fly America Act are found at 41 CFR §§ 301-10.131 through 301-10.143.

- b. The Fly America Act requires that Federal travelers and others performing U.S. Government-financed foreign air travel must use U.S. flag air carriers, to the extent that service by such carriers is available. Foreign air carriers may be used only in specific instances, such as when a U.S. flag air carrier is unavailable, or use of U.S. flag air carrier service will not accomplish the agency's mission.
- c. Use of foreign air carriers may also be used only if bilateral agreements permit such travel pursuant to 49 U.S.C. § 40118(b). DoC is not aware of any bilateral agreements which meet these requirements. Therefore, it is the responsibility of the Recipient to provide the Grants Officer with a copy of the applicable bilateral agreement if use of a foreign carrier under a bilateral agreement is anticipated.
- d. If a foreign air carrier is anticipated to be used for any part of foreign travel, the Recipient must receive prior approval from the Grants Officer. When requesting such approval, the Recipient must provide a justification in accordance with guidance provided by 41 CFR § 301-10.142, which requires the Recipient to provide the Grants Officer with the following: name; dates of travel; origin and destination of travel; detailed itinerary of travel, name of the air carrier and flight number for each leg of the trip; and a statement explaining why the Recipient meets one of the exceptions to the regulations. If the use of a foreign air carrier is pursuant to a bilateral agreement, the Recipient must provide the Grants Officer with a copy of the agreement. The Grants Officer shall make the final determination and notify the Recipient in writing. Failure to adhere to the provisions of the Fly America Act will result in the Recipient not being reimbursed for any transportation costs for which the Recipient improperly used a foreign air carrier.

3. American-Made Equipment and Products Recipients are hereby notified that they are encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this award.

4. Intellectual Property Rights

- a. **Inventions** The rights to any invention made by a Recipient under a DoC financial assistance award are determined by the Bayh-Dole Act, Pub. L. 96-517, as amended, and codified in 35 U.S.C. § 200 et seq. except as otherwise required by law. The specific rights and responsibilities are described in more detail in 37 CFR Part 401 and in particular, in the standard patent rights clause in 37 CFR § 401.14.

(1) Ownership

- (a) Recipient** The Recipient has the right to own any invention it makes (conceived or first reduced to practice) or made by its employees. The Recipient may not assign its rights to a third party without the permission of DoC unless it is to a patent management organization (i.e., a university's Research Foundation.) The Recipient's ownership rights are subject to the Government's nonexclusive paid-up license.
- (b) Department** If the Recipient elects not to own or does not elect rights or file a patent application within the time limits set forth in the standard patent rights clause, DoC may request an assignment of all rights, which is normally subject to a limited royalty free nonexclusive license for the Recipient. DoC owns any invention made solely by its employees but may license the Recipient in accordance with the procedures in 37 CFR Part 404.
- (c) Inventor/Employee** If neither the Recipient nor the Department is interested in owning an invention by a Recipient employee, the Recipient, with the written concurrence of DoC Patent Counsel, may allow the inventor/employee to own the invention subject to certain restrictions as described in 37 CFR § 401.9.
- (d) Joint inventions** Inventions made jointly by a Recipient and a DoC employee will be owned jointly by the Recipient and DoC. However, DoC may transfer its rights to the Recipient as authorized by 35 U.S.C. § 202(e) and 37 CFR § 401.10 if the Recipient is willing to patent and license the invention in exchange for a share of "net" royalties based on the number of inventors (e.g., 50-50 if there is one Recipient and DoC employee). The agreement will be prepared by DoC Patent Counsel and may include other provisions, such as a royalty free license to the Government and certain other entities.

- (2) Responsibilities** The Recipient has responsibilities and duties set forth in the standard patent rights clause, which are not described below. The Recipient is expected to comply with all the requirements of the standard patent rights clause and 37 CFR Part 401.

- (a) **Reporting** Within two months of when the Recipient reports the invention, the Recipient will send the invention disclosure to DoC Patent Counsel (HCHB Room 4613, Washington, DC 20230, telephone: 202-482-8097) and the appropriate DoC program office.
- (b) **Electing** Within two years of reporting the invention to DoC, the Recipient will notify DoC Patent Counsel of its decision whether or not it wishes to own the invention.
- (c) **Filing** Within one year of notifying DoC that it wishes to own the invention, the Recipient will file a patent application (either a provisional or non-provisional) and promptly send a copy of the application to DoC Patent Counsel. Any foreign or international application must usually be filed within 10 months of the first filed application in the United States. The Recipient will ensure that any U.S. application contains the required statement of Government support. The Recipient will also promptly send the required confirmatory Government license to DoC Patent Counsel who shall record that license in the Patent and Trademark Office. If the Recipient decides to discontinue the prosecution of any patent application or not pay a maintenance fee or defend a reexamination, it shall notify DoC Patent Counsel of that fact in sufficient time (but not less than 30 days) for the Government to respond to any outstanding requirement or letter from a patent office. However, if the Recipient is filing a continuing application, it needs only to notify DoC Patent Counsel of this and provide a copy of the continuing application with the appropriate confirmatory license. Upon issuance of any application, the Recipient will promptly provide a copy of the patent to DoC Patent Counsel.
- (d) The Recipient should send any request for an extension of time to DoC Patent Counsel in advance of the expiration of the time period.

- b. **Patent Notification Procedures** Pursuant to EO 12889, DoC is required to notify the owner of any valid patent covering technology whenever the DoC or its financial assistance Recipients, without making a patent search, knows (or has demonstrable reasonable grounds to know) that technology covered by a valid United States patent has been or will be used without a license from the owner. To ensure proper notification, if the Recipient uses or has used

patented technology under this award without a license or permission from the owner, the Recipient must notify the DoC Patent Counsel at the following address, with a copy to the Grants Officer:

Department of Commerce
Office of Chief Counsel for Technology, Patent Counsel
14th Street and Constitution Avenue, NW, Room H-4613
Washington, D.C. 20230

- c. Data, Databases, and Software** The rights to any work produced or purchased under a DoC Federal financial assistance award are determined by 15 CFR § 24.34 and 15 CFR § 4.36. Such works may include data, databases or software. The Recipient owns any work produced or purchased under a DoC Federal financial assistance award subject to DoC's right to obtain, reproduce, publish or otherwise use the work or authorize others to receive, reproduce, publish or otherwise use the data for Government purposes.
 - d. Copyright** The Recipient may copyright any work produced under a DoC Federal financial assistance award subject to DoC's royalty-free nonexclusive and irrevocable right to reproduce, publish or otherwise use the work or authorize others to do so for Government purposes. Works jointly authored by DoC and Recipient employees may be copyrighted but only the part authored by the Recipient is protected because, under 17 U.S.C. § 105, works produced by Government employees are not copyrightable in the United States. If the contributions of the authors cannot be separated, the copyright status of the joint work is questionable. On occasion, DoC may ask the Recipient to transfer to DoC its copyright in a particular work when DoC is undertaking the primary dissemination of the work. Ownership of copyright by the Government through assignment is permitted by 17 U.S.C. § 105.
- 5. Increasing Seat Belt Use in the United States** Pursuant to EO 13043, Recipients should encourage employees and contractors to enforce on-the-job seat belt policies and programs when operating company-owned, rented or personally-owned vehicles.
- 6. Research Involving Human Subjects**

 - a.** All proposed research involving human subjects must be conducted in accordance with 15 CFR Part 27, "Protection of Human Subjects." No research involving human subjects is permitted under any DoC financial assistance award unless expressly authorized by the Grants Officer.

- b. No research involving human subjects is permitted under this award unless expressly authorized by Special Award Condition, or otherwise in writing by the Grants Officer.
- c. Federal policy defines a human subject as a living individual about whom an investigator conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information. Research means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge.
- d. DoC regulations, 15 CFR Part 27, require that Recipients maintain appropriate policies and procedures for the protection of human subjects. In the event it becomes evident that human subjects may be involved in this project, the Recipient shall submit appropriate documentation to the Federal Program Officer for approval by the appropriate DoC officials. This documentation may include:
 - (1) Documentation establishing approval of the project by an institutional review board (IRB) approved for Federal-wide use under Department of Health and Human Services guidelines, see 15 CFR § 27.103;
 - (2) Documentation to support an exemption for the project under 15 CFR § 27.101(b);
 - (3) Documentation to support deferral for an exemption or IRB review under 15 CFR § 27.118;
 - (4) Documentation of IRB approval of any modification to a prior approved protocol or to an informed consent form.
- e. No work involving human subjects may be undertaken, conducted, or costs incurred and/or charged for human subjects research, until the appropriate documentation is approved in writing by the Grants Officer. Notwithstanding this prohibition, work may be initiated or costs incurred and/or charged to the project for protocol or instrument development related to human subjects research.

- 7. **Federal Employee Expenses** Federal agencies are generally barred from accepting funds from a Recipient to pay transportation, travel, or other expenses for any Federal employee unless specifically approved in the terms of the award. Use of award funds (Federal or non-Federal) or the Recipient's provision of in-kind goods or services, for the purposes of transportation, travel, or any other expenses for any Federal employee may raise appropriation augmentation issues. In addition, DoC policy prohibits the

acceptance of gifts, including travel payments for Federal employees, from Recipients or applicants regardless of the source.

- 8. Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects** Pursuant to EO 13202, "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects," unless the project is exempted under section 5(c) of the order, bid specifications, project agreements, or other controlling documents for construction contracts awarded by Recipients of grants or cooperative agreements, or those of any construction manager acting on their behalf, shall not:

 - a.** include any requirement or prohibition on bidders, offerors, contractors, or subcontractors about entering into or adhering to agreements with one or more labor organizations on the same or related construction project(s); or
 - b.** otherwise discriminate against bidders, offerors, contractors, or subcontractors for becoming or refusing to become or remain signatories or otherwise to adhere to agreements with one or more labor organizations, on the same or other related construction project(s)
- 9. Minority Serving Institutions (MSIs) Initiative** Pursuant to EOs 12876, 12900, and 13021, DoC is strongly committed to broadening the participation of MSIs in its financial assistance programs. DoC's goals include achieving full participation of MSIs in order to advance the development of human potential, strengthen the Nation's capacity to provide high-quality education, and increase opportunities for MSIs to participate in and benefit from Federal financial assistance programs. DoC encourages all applicants and Recipients to include meaningful participation of MSIs. Institutions eligible to be considered MSIs are listed on the Department of Education website.

PART II

REVOLVING LOAN FUND OPERATIONS

GRANTEE MANAGEMENT & ADMINISTRATIVE REQUIREMENTS

The following section applies to the administration and management of an operating EDA RLF.

- A. THE REVOLVING LOAN FUND LOAN BOARD** Special requirements for RLF operators are found in EDA's Civil Rights Guidelines.
- B. THE REVOLVING LOAN FUND PLAN REQUIREMENTS** A Revolving Loan Fund (RLF) Plan is a document developed by the RLF grant award Recipient that sets forth the strategy, policies and operating rules that the Recipient will use to administer the RLF. RLF Recipients must manage their RLF in accordance with an RLF Plan (Plan) as described in this part. For all RLF Recipients, the plan must be submitted to and approved by EDA prior to the grant award. Unless otherwise provided for in special award conditions, EDA approval of an RLF award constitutes approval of the RLF Plan. For RLF Recipients other than states, the Plan must have been passed by resolution of the organizations' governing board, and such resolution must be submitted to EDA along with the plan prior to the grant award; political subdivisions of states may be exempted from the governing board resolution requirement with EDA approval.
(See 13 CFR § 308.9)
- C. RLF PLAN MODIFICATIONS**
1. While EDA encourages RLFs to be responsive to their communities, any modifications to the RLF Plan must first be approved by EDA.
 2. Proposed RLF Plan modifications will be evaluated under the same criteria applicable to the original RLF Plan.
(See 13 CFR §§ 308.9(b) and 308.14(b))
- D. ADDITIONAL RLF PLAN GUIDANCE** EDA *Revolving Loan Fund Plan Guidelines*, published separately, provide additional guidance to grant Recipients for the preparation of the RLF Plan. As such, the guidance provided in the *Revolving Loan Fund Plan Guidelines* is intended to expand and further explain, but not diminish, the RLF Plan requirements of Section B, above.
- E. LENDING AREA AND MODIFICATION OF LENDING AREAS** The economic activity and benefits of RLF loans must be located within the eligible areas identified in the grant award, and new RLF lending areas must be included in or added to a CEDS. The

determination of eligibility and CEDS compliance for a new area will be made in accordance with 13 CFR §§ 301.2 and 301.3.

1. Where such RLFs have a grant condition that permits new areas that subsequently become eligible to be added to the lending area, RLFs that were awarded assistance (RLF capitalization or recapitalization) before February 11, 1999, whether fully disbursed or not, and fully disbursed RLFs that were awarded assistance (RLF capitalization or recapitalization) on or after February 11, 1999, may add such areas with EDA approval.
2. In the case of existing RLFs that are not fully disbursed that were awarded assistance (RLF capitalization or recapitalization) on or after February 11, 1999, the area proposed to be added must also be eligible to receive an EDA grant rate equal to or greater than that of the original grant.
3. Whenever an area is added, modification to the RLF Plan incorporating the new area and outlining the RLF lending strategy is required. Once approved, area eligibility is retained indefinitely.
(See 13 CFR § 308.11)

F. PRUDENT LENDING PRACTICES The Recipient is expected to administer the RLF in accordance with prudent lending practices, i.e., generally accepted underwriting and lending practices for public loan programs based on sound judgement to protect Federal and lender interests. Such practices cover loan processing, documentation, loan approval, collections, servicing, administrative procedures, collateral protection, and recovery actions. Prudent lending practices include compliance with local laws and filing requirements to perfect and maintain security interests in RLF collateral.
(See 13 CFR § 308.8)

1. Accounting principles

- a. RLFs are expected to be operated in accordance with the Generally Accepted Accounting Principles (GAAP) and the provisions outlined in OMB Circular A-133 and Compliance Supplements as applicable.
- b. In accordance with GAAP, a loan loss reserve may be reflected in the financial statements to show the fair value of an RLF's loan portfolio provided it is non-funded and represents non-cash entries.

2. **Interest rates** An RLF Recipient can make loans and guarantee loans to eligible borrowers at interest rates and under conditions determined by the RLF Recipient to be most appropriate in achieving the goals of the RLF. However, the minimum

interest rate an RLF can charge is four (4) percentage points below the current money center prime rate quoted in the Wall Street Journal or the maximum interest rate allowed under state law, whichever is lower. In no event may the interest rate be less than four (4) percent. However, should the prime interest rate exceed fourteen (14) percent, the minimum RLF interest rate is not required to be raised above ten (10) percent if doing so compromises the ability of the RLF Recipient to implement its financing strategy.

3. Private leveraging

- a.** RLF loans must be used to leverage private investment of at least two dollars for every dollar of RLF investment. This leveraging requirement applies to the portfolio as a whole, rather than to individual loans and is effective for the life of the RLF. Private investment, to be classified as leveraged, must be made concurrently with an RLF loan as part of the same business development project and may include:
 - (1)** Capital invested by the borrower or others,
 - (2)** Financing from private entities, or
 - (3)** The unguaranteed portion and 90 percent of the guaranteed portions of SBA 7(a) and SBA 504 debenture loans.
- b.** Private investments do not include an equity build-up in a borrower's assets or prior capital investments by a borrower unless the investment is made within nine months of the RLF loan and is recognized by the RLF Recipient.

4. Conflict of interest

- a.** No officer, employee, or member of the RLF Recipient's Board of Directors, or other Board (hereinafter referred to as "other board") that advises, approves, recommends or otherwise participates in decisions concerning loans or the use of RLF grant funds, or person related to the officer, another employee, or any member of the Board by immediate family, law, or business arrangement, may receive any benefits resulting from the use of the RLF loan or grant funds. In addition, the RLF Recipient may not lend RLF funds to an employee of the RLF Recipient or any member of the RLF Recipient's Board of Directors, or a member of any other Board. Immediate family is defined as parents, grandparents, siblings, children and grandchildren, but does not include more distant relatives, including cousins, unless they live in the same household. Exception: A benefit or loan may be conferred if the officer, employee, or Board member affected first discloses to the RLF Recipient on the

public record the proposed or potential benefit and receives the RLF Recipient's written determination that the benefit involved is not so substantial as to reflect adversely upon or affect the integrity of the RLF Recipient's decision process or the services of the officer, employee or board member.

- b.** An officer, employee or board member of the RLF Recipient must not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment or any other thing of monetary value, for himself or for another person, from any person or organization seeking to obtain a loan or any portion of the grant funds.
- c.** Former board members and/or officers are ineligible to apply for or receive an RLF loan for a period of one year from the date of termination of his/her services. Exception: A benefit or loan may be conferred if the officer, or Board member affected first discloses to the RLF Recipient on the public record the proposed or potential benefit and receives the RLF Recipient's written determination that the benefit involved is not so substantial as to reflect adversely upon the integrity of the RLF Recipient's decision process.
(See 13 CFR § 308.15)

- 5. Protection of RLF Assets** RLF Recipients are required to obtain adequate and appropriate collateral from borrowers, and to act diligently to protect the interests of the RLF, through collection, foreclosure, or other recovery actions on defaulted loans.

G. EFFECTIVE UTILIZATION OF REVOLVING LOAN FUNDS

1. Capital Utilization Standard

- a.** During the revolving phase, RLF Recipients must manage their repayment and lending schedules such that at least 75 percent of the RLF's capital is loaned out or committed at all times. RLF income earned during a current reporting period is not included as RLF capital when calculating the capital utilization percentage. Exception:
 - (1)** RLF Recipients that anticipate making large loans relative to the size of the capital base, may propose RLF Plans that call for holding more than 25 percent.
 - (2)** EDA may require an RLF with a capital base in excess of \$4 million to adopt a Plan that maintains a proportionately higher percentage of their funds loaned out.

b. Indirect Costs

- (1) Indirect costs will not be allowable charges against the award unless specifically included as a line item in the approved budget incorporated into the award. (The term “indirect cost” has been replaced with the term “facilities and administrative costs” under OMB Circular A-21, “Cost Principles for Educational Institutions.”)
- (2) Excess indirect costs may not be used to offset unallowable direct costs.
- (3) If the Recipient has not previously established an indirect cost rate with a Federal agency, the negotiation and approval of a rate is subject to the procedures in the applicable cost principles and the following subparagraphs:

 - (a) For those organizations for which DoC is cognizant or has oversight, DoC or its designee either will negotiate a fixed rate for the recipient or, in some instances, will limit its review to evaluating the procedures described in the recipient’s cost allocation methodology plan. Indirect cost rates and cost allocation methodology reviews are subject to future audits to determine actual indirect costs. Within 90 days of the award start date, the recipient shall submit to the address listed below documentation (indirect cost proposal, cost allocation plan, etc.) necessary to perform the review. The recipient shall provide the Grants Officer with a copy of the transmittal letter.

Office of Executive Assistance Management
Department of Commerce
14th Street & Constitution Avenue, NW, Room H6022
Washington, DC 20230

- (b) When an oversight or cognizant Federal agency other than DoC has responsibility for establishing an indirect cost rate, the Recipient shall submit to that oversight or cognizant Federal agency within 90 days of the award start date the documentation (indirect cost proposal, cost allocation plan, etc.) necessary to establish such rates. The Recipient shall

provide the Grants Officer with a copy of the transmittal letter to the cognizant Federal agency.

- (c) If the Recipient fails to submit the required documentation to DoC or other oversight or cognizant Federal agency within 90 days of the award start date, the Grants Officer may amend the award to preclude the recovery of any indirect costs under the award. If the DoC, oversight, or cognizant Federal agency determines there is a finding of good and sufficient cause to excuse the Recipient's delay in submitting the documentation, an extension of the 90-day due date may be approved by the Grants Officer.
- (d) Regardless of any approved indirect cost rate applicable to the award, the maximum dollar amount of allocable indirect costs for which DoC will reimburse the Recipient shall be the lesser of:
 - (i) The line item amount for the Federal share of indirect costs contained in the approved budget of the award; or
 - (ii) The Federal share of the total allocable indirect costs of the award based on the indirect cost rate approved by a cognizant or oversight Federal agency and current at the time the cost was incurred, provided the rate is approved on or before the award end date.

- c. **Other Eligible Administrative Costs** Costs eligible for reimbursement from RLF income must be consistent with the cost principles outlined in the appropriate OMB cost principle circular (OMB Circulars A-21, A-87 or A-122).

2. Revolving Loan Fund Income

- a. RLF income can be used to pay for eligible and reasonable administrative costs for the project. RLF Recipients are expected to add RLF income to the RLF capital base where practicable. To determine the appropriate amount of RLF

income to return to the RLF capital base, RLF operators must consider the costs necessary to operate an RLF program, the availability of other monetary resources, the portfolio risk level and projected capital erosions from loan losses and inflation, the community's (or area's) commitment to the RLF, and the anticipated demand for RLF loans.

- b.** RLF income that is not used for administrative costs during the selected twelve-month reporting period in which it is earned, must be added to the RLF capital base for lending purposes at the end of the twelve-month reporting period. Only RLF income earned during a current period may be used for current administrative expenses. RLF income may not be withdrawn from an RLF in a subsequent period for any uses, other than lending, without the written consent of EDA.
- c.** In accounting for RLF income, any net proceeds from the sale, collection, or liquidation of a defaulted loan, up to the amount of the unpaid principal, will be treated as repayments of RLF principal and placed in the RLF for lending purposes only. Any proceeds in excess of the unpaid principal will be treated as RLF income.
- d.** RLF Recipients must comply with applicable OMB cost principles (as found in OMB Circular A-87, A-122 or A-21) and with RLF Audit Guidelines (as found in OMB Circular A-133, Audits of States, Local Governments, and Nonprofit Organizations, or the Compliance Supplement, as appropriate) when charging costs against RLF income.
- e.** When an RLF Recipient uses RLF income to cover all or part of RLF administrative costs, they must complete an RLF Income and Expense Statement required under 13 CFR § 308.14(c).
(See 13 CFR § 308.12)

I. RECORDS AND RETENTION

- 1. Loan Files and Related Documents and Records** Loan files and related documents and records must be retained by RLF Recipients over the life of the loan and for a three-year period from the date of final disposition of the loan. The date of final disposition of the loan is defined as the date of:

 - a.** Full payment of the principal, interest, fees, penalties, and other costs associated with the loan; or
 - b.** Final settlement or write-off of any unpaid amounts associated with the loan.

2. Administrative Records RLF Recipients must:

- a.** Maintain adequate accounting records and source documentation to substantiate the amount and percent of RLF income expended for eligible RLF administrative costs.
- b.** Retain records of administrative costs incurred for activities and equipment relating to the operation of the RLF for three years from the actual submission date of the last semiannual or annual report which covers the period that such costs were claimed, or for five years from the date the costs were claimed, whichever is less.
- c.** Make any retained records, even those retained for longer than the period described, available for inspection. The record retention periods, described in 13 CFR § 308.13, are minimum periods and such prescription is not intended to limit any other record retention requirement of law or agreement. *(See 13 CFR § 308.13, 15 CFR § 14.53 and 15 CFR § 24.42, as applicable)*

J. REVOLVING LOAN FUND SEMIANNUAL AND ANNUAL REPORTS

- 1. Frequency of reports** All RLF Recipients, including existing RLFs that receive recapitalization grants, must submit Semiannual Reports (Form ED-209S) until they qualify or requalify for “Annual Report” (Form ED-209A) status. RLF Recipients may apply for “Annual Report” status if:
 - a.** All grant funds have been disbursed for at least one year;
 - b.** Accurate semiannual reports have been submitted on-time for the preceding two years;
 - c.** Required periodic audits have been completed and submitted to EDA for the most recent audit period within the last two years; and
 - d.** EDA determines that the RLF is in compliance with all applicable RLF requirements.
- 2. RLF Plan Certification** RLF Recipients must certify as part of the semiannual or annual report to EDA that the RLF is being operated in accordance with the Plan referenced in 13 CFR § 308.9 of this part. RLF Recipients must request EDA approval of modifications to the Plan at any time there is evidence that such modifications are needed to ensure effective use of the RLF as a strategic financing tool.

3. **RLF income statement** RLF Recipients using RLF income equivalent to 50 percent or more or at least \$100,000 of RLF income for RLF administrative expenses during the selected twelve-month period, must submit a completed RLF Income and Expense Statement (Form ED-209I) per 13 CFR § 308.12(e) to the appropriate EDA Regional Office within 90 days of either September 30 or the RLF Recipient's fiscal year end, whichever period is selected by the RLF Recipient. RLF Recipients using less than 50 percent and less than \$100,000 of RLF income for administrative expenses in the twelve-month period will retain the RLF Income and Expense Statement for three years. RLF Recipients are required to make this statement available to EDA personnel upon request.
(See 13 CFR § 308.14)

PART III

LENDING RESTRICTIONS AND BORROWER REQUIREMENTS

A. USES OF CAPITAL Generally, eligible loans to borrowers include loans for fixed assets, the acquisition of equipment, working capital, or other authorized uses. The EDA grant and the local cash matching funds will be used only for the purpose of making loans under an RLF. To preclude borrowers from using RLF funds inappropriately, the purpose of each RLF loan should be clearly stated in the loan agreement. RLFs established for business lending must conform to the following:

1. Loan Guarantees Prior to full disbursement of grant funds, the RLF Recipient may not use the RLF to guarantee loans made by other lenders. In the revolving phase, after the full disbursement of grant funds, the RLF may be used to guarantee loans of private lenders provided the RLF Recipient has obtained EDA's prior written approval of its proposed loan guarantee activities. The Plan for any loan guarantee activities should include the following information:

- a.** The maximum guarantee percentage that will be offered;
- b.** Certification from the RLF attorney that the guarantee agreement is valid under state law. At a minimum, the guarantee agreement must address the following:

- (1)** The maximum reserve requirement;
- (2)** The rights and duties of each party in regard to loan collections, servicing, delinquencies and defaults;
- (3)** Foreclosures;
- (4)** Bankruptcies;
- (5)** Collateral disposition and the call provisions of the guarantee; and
- (6)** Interest income and loan fees, if any, which will accrue to the RLF.

2. Restrictions on RLF Capital RLF capital may not be used to:

- a.** Acquire an equity position in a private business;
- b.** Subsidize interest payments on an existing loan;

- c. Provide the equity contribution required of borrowers under other Federal loan programs;
- d. Enable an RLF borrower to acquire an interest in a business, either through the purchase of stock or through the acquisition of assets, unless the need for RLF financing is sufficiently justified and documented in the loan write-up. Acceptable justification could include acquiring a business to substantially save it from imminent foreclosure, or acquiring it to facilitate a significant expansion or increased investment. In any case, the resulting economic benefits should be clearly consistent with the strategic objectives of the RLF;
- e. Provide loans to a borrower for the purpose of investing in interest bearing accounts, certificates of deposit, or other investments not related to the objectives of the RLF;
- f. Refinance existing debt unless:
 - (1) There is sound economic justification and the RLF Recipient sufficiently documents in the loan write-up that the RLF is not replacing private capital solely for the purpose of reducing the risk of loss to an existing lender(s) or to lower the cost of financing to a borrower, or
 - (2) An RLF uses RLF income sources and/or recycled RLF funds to purchase the rights of a prior lien holder during an in-process foreclosure action in order to preclude a significant loss on an RLF loan. This action may be undertaken only if there is a high probability of receiving compensation within 18 months from the sale of assets sufficient to cover an RLF's expenses plus a reasonable portion of the outstanding loan obligation; or
- g. Finance any activity that serves to relocate jobs from one commuting area to another. (Commuting area is that area defined by the distance people travel to work in the locality of the project receiving RLF financial assistance.) An RLF's standard loan agreement must include a provision for calling the loan if it is determined that: (1) The business used the RLF loan to relocate jobs from another commuting area; or (2) The activity financed was subsequently moved to a different commuting area to the detriment of local workers. *(See 13 CFR § 308.18)*

The non-relocation requirements stated in paragraph A.2.(g.) of this section shall not apply to a business which:

- (1) Relocated to the area prior to the date of the applicant's request for EDA assistance;

- (2) Has moved or will move into the area primarily for reasons unrelated to EDA assistance;
- (3) Will expand employment in the area where the project is to be located substantially beyond employment in the area in which the business had originally been located;
- (4) Is relocating from technologically obsolete facilities to remain competitive;
- (5) Is expanding into the new area by adding a branch, affiliate, or subsidiary while maintaining employment levels in the old area(s); or
- (6) Is determined “exempt” by EDA. *(See 13 CFR § 316.3)*

3. **Credit otherwise available** Unless otherwise provided for in the grant agreement or modified in writing by EDA, a borrower is not eligible for RLF financing if credit is otherwise available on terms and conditions that permit the completion or successful operation of the project activity to be financed. The RLF Recipient is responsible for determining that each borrower meets this requirement and for documenting the basis for its determination in the loan write-up.
(See 13 CFR § 308.18(c))

- B. **FEDERAL REQUIREMENTS THAT APPLY TO RLF BORROWERS** RLF Recipients are responsible for ensuring, prior to providing any loan assistance, that prospective borrowers, consultants, or contractors are aware of and comply with the Federal statutory and regulatory requirements that apply to activities carried out with RLF loans. RLF Recipients must develop loan agreements that include applicable Federal requirements to ensure compliance. RLF Recipients must adopt procedures to diligently correct instances of non-compliance, including the calling of loans, if necessary. RLF Recipient loan documents and procedures must protect and hold the Government harmless from and against all liabilities that the Government may incur as a result of providing an award to assist (directly or indirectly) in site preparation or construction as well as the renovation or repair of any facility or site. This applies to the extent that such liabilities are incurred because of ground water, surface, soil or other conditions caused by operations of the RLF Recipient or any of its predecessors on the property.
(See 13 CFR § 308.10(b))

1. **Pre-loan Requirements** Borrowers must comply with applicable laws and regulations including, but not limited to 13 CFR §§ 316.1, 316.3, 316.7, 316.8, 316.15, and 317.
(See 13 CFR § 308.10(a))
2. **Non-Discrimination Requirements** No person in the United States shall, on the grounds of race, color, national origin, handicap, age, religion, or sex, be excluded from

participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance. The Recipient agrees to comply with the non-discrimination statutory provisions below:

- a. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.) and DoC implementing regulations published at 15 CFR Part 8 which prohibit discrimination on the grounds of race, color, or national origin under programs or activities receiving Federal financial assistance;
 - b. Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.) prohibiting discrimination on the basis of sex under Federally assisted education programs or activities;
 - c. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794) and DoC implementing regulations published at 15 CFR Part 8b prohibiting discrimination on the basis of handicap under any program or activity receiving or benefitting from Federal assistance;
 - d. The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 et seq.) and DoC implementing regulations published at 15 CFR Part 20 prohibiting discrimination on the basis of age in programs or activities receiving Federal financial assistance;
 - e. The Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.) prohibiting discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation;
 - f. Section 112 of P.L. 92-65 (42 U.S.C. § 3123) prohibiting sex discrimination in any program or activity receiving Federal Financial assistance under PWEDA.
 - g. Any other applicable non-discrimination law(s).
3. **Davis Bacon** In accordance with section 602 of PWEDA, all laborers and mechanics employed by contractors or subcontractors on projects assisted by EDA under PWEDA shall be paid in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a - 276a-5).
(See 13 CFR § 316.15)

APPENDIX

THE FOLLOWING REFERENCE MATERIALS AND REQUIRED OR SAMPLE REPORTING FORMATS ARE AVAILABLE FROM EDA:

OMB CIRCULARS AND CFR'S (LIST OF REPRINTS)

15 CFR Part 14, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, Other Non-Profit and Commercial Organizations

15 CFR Part 24, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

OMB Circular A-87, Cost Principles for State, Local and Indian Tribal Governments

OMB Circular A-133, Audits of States, Local Governments and Nonprofit Organizations

OMB Circular A-122, Cost Principles for Nonprofit Organizations

OMB Circular A-21, Cost Principles for Educational Institutions

48 CFR Part 31, Contract Cost Principles and Procedures

15 CFR Part 26, Government-wide Debarment and Suspension, Non-Procurement and Government-wide Requirements for Drug Free Workplace (Grants)

EDA REFERENCE MATERIALS AND REPORTING FORMATS

(SF-270) Request for Advance or Reimbursement with EDA Special Instructions

(SF-272) Federal Cash Transaction Report

Semiannual Report for RLF Grants with Instructions

Annual Report for RLF Grants with Instructions_

RLF Income and Expense Statement with Instructions